

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 580, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 immigration.
- 4 Page 4, delete lines 24 through 30.
- 5 Page 5, delete lines 27 through 42, begin a new paragraph and
- 6 insert:
- 7 "SECTION 7. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE
- 8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2009]:
- 10 **Chapter 1.5. Employment of Unauthorized Aliens**
- 11 **Sec. 1. (a) This chapter applies only to an employee that an**
- 12 **employer hires after September 30, 2009.**
- 13 **(b) Except as provided in subsection (c), this chapter does not**
- 14 **apply to the following:**
- 15 **(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject**
- 16 **to regulation by the Indiana utility regulatory commission**
- 17 **under IC 8-1-2.**
- 18 **(2) A hospital licensed under IC 16-21.**
- 19 **(3) A county hospital organized under IC 16-22.**
- 20 **(4) A municipal hospital organized under IC 16-23.**

- 1 **(5) A nonprofit corporation.**
- 2 **(6) A person who operates a business of transporting**
- 3 **emergency patients by ambulance or using a nontransporting**
- 4 **emergency medical services vehicle (as defined in**
- 5 **IC 16-31-3-0.5).**
- 6 **(7) A corporation organized under IC 8-1-13.**
- 7 **(8) A corporation organized under IC 23-17 that is an electric**
- 8 **cooperative and that has at least one (1) member that is a**
- 9 **corporation organized under IC 8-1-13.**
- 10 **(c) The definitions in this chapter apply to this subsection. After**
- 11 **September 30, 2009, a person listed under subsection (b) shall**
- 12 **verify the employment eligibility of each employee of the person**
- 13 **through the E-Verify program after hiring the employee.**
- 14 **Sec. 2. As used in this chapter, "agency" means any state or**
- 15 **local administration, agency, authority, board, bureau,**
- 16 **commission, committee, council, department, division, institution,**
- 17 **office, service, or other similar body of government created or**
- 18 **established by law that issues a license for purposes of operating a**
- 19 **business in Indiana.**
- 20 **Sec. 3. As used in this chapter, "employee" means an individual**
- 21 **who:**
- 22 **(1) works or is hired to work for at least one thousand five**
- 23 **hundred (1,500) hours during a twelve (12) month period;**
- 24 **(2) performs services for an employer; and**
- 25 **(3) is an individual from whom the employer is required to**
- 26 **withhold wages under IC 6-3-4-8 or is an employee described**
- 27 **in IC 6-3-4-8(l).**
- 28 **Sec. 4. (a) As used in this chapter, "employer" means a person**
- 29 **that:**
- 30 **(1) transacts business in Indiana;**
- 31 **(2) has a license issued by an agency; and**
- 32 **(3) employs one (1) or more individuals who perform**
- 33 **employment services in Indiana.**
- 34 **(b) The term includes the state, a political subdivision (as**
- 35 **defined in IC 3-5-2-38) of the state, and a self-employed person.**
- 36 **Sec. 5. As used in this chapter, "E-Verify program" means the**
- 37 **electronic verification of work authorization program of the Illegal**
- 38 **Immigration Reform and Immigration Responsibility Act of 1996**

(P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

Sec. 6. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2.

Sec. 7. (a) As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

(1) required by law; and

(2) issued by an agency;

for purposes of operating a business in Indiana.

(b) The term does not include an occupational or professional license.

Sec. 8. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

Sec. 9. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 10. An employer shall not knowingly employ an unauthorized alien.

Sec. 11. (a) The attorney general may investigate a complaint filed with the attorney general that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter.

(b) In investigating a complaint under subsection (a), the attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government under 8 U.S.C. 1373(c).

(c) A complaint filed with the attorney general under subsection (a) must be:

(1) in writing; and

(2) signed by the individual filing the complaint.

Sec. 12. A state, county, or local official or employee may not attempt to make independently a final determination as to whether

1 an individual is authorized to work in the United States.

2 Sec. 13. If, after an investigation, the attorney general
3 determines that an employer has knowingly employed an
4 unauthorized alien, the attorney general shall notify:

- 5 (1) the United States Immigration and Customs Enforcement;
6 (2) local law enforcement agencies; and
7 (3) the prosecuting attorney in the county in which the
8 unauthorized alien is employed.

9 Sec. 14. (a) If the attorney general notifies a prosecuting
10 attorney under section 13 of this chapter that an employer has
11 knowingly employed an unauthorized alien, the prosecuting
12 attorney may bring a civil action for a violation of section 10 of this
13 chapter against an employer in the county where the unauthorized
14 alien is employed.

15 (b) A prosecuting attorney filing an action under subsection (a)
16 may file only one (1) action against an employer relating to the
17 employment of all unauthorized aliens employed by the employer
18 at a business location of the employer at the time the prosecuting
19 attorney files the action. The prosecuting attorney may file an
20 additional action against an employer relating to the employment
21 of unauthorized aliens for each business location at which the
22 employer employs unauthorized aliens.

23 (c) The prosecuting attorney may file an additional action
24 against an employer under this section for a second or subsequent
25 violation of section 10 of this chapter only for violations allegedly
26 committed by the employer after the employer receives notice that
27 the prosecuting attorney has filed an action against the employer
28 relating to the employment of unauthorized aliens at a specific
29 business location under this section.

30 Sec. 15. If a prosecuting attorney files an action under section 14
31 of this chapter, the court in which the action is filed may hold a
32 hearing and make a determination on an expedited basis.

33 Sec. 16. Except as provided in sections 17, 18, and 19 of this
34 chapter, if a trier of fact determines that an employer knowingly
35 employed an unauthorized alien in violation of section 10 of this
36 chapter, the court may do the following:

- 37 (1) Order the employer to terminate the employment of all
38 unauthorized aliens employed by the employer.

(2) Place the employer on probation for a one (1) year period, beginning on the date of the order. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1).

The affidavit must include a statement that the employer:

(A) has terminated the employment of all unauthorized aliens; and

(B) will not knowingly employ an unauthorized alien.

Sec. 17. If a trier of fact determines that an employer knowingly employed an unauthorized alien in a second violation of section 10 of this chapter, the court may do the following:

(1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.

(2) Place the employer on probation for a five (5) year period, beginning on the date of the order. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1).

The affidavit must include a statement that the employer:

(A) has terminated the employment of all unauthorized aliens; and

(B) will not knowingly employ an unauthorized alien.

Sec. 18. If a trier of fact determines that an employer knowingly employed an unauthorized alien in a third violation of section 10 of this chapter, the court may do the following:

(1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.

(2) Place the employer on probation for a seven (7) year period, beginning on the date of the order. During the

probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1).

The affidavit must include a statement that the employer:

(A) has terminated the employment of all unauthorized aliens; and

(B) will not knowingly employ an unauthorized alien.

Sec. 19. If a trier of fact determines that an employer knowingly employed an unauthorized alien in a fourth violation of section 10 of this chapter, the court may order the appropriate agencies to revoke the employer's license or licenses for a period determined by the court or permanently revoke all licenses held by the employer that are described in section 20(a) of this chapter.

Sec. 20. (a) This section applies to all licenses held by an employer:

(1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien worked; or

(2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

(b) If an employer fails to file a sworn affidavit required under section 16(3), 17(3), or 18(3) of this chapter with the prosecuting attorney within thirty (30) business days after the order requiring the filing of the affidavit is issued, the court may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit as required under section 16(3), 17(3), or 18(3) of this chapter with the prosecuting attorney.

(c) If the employer subject to an order filed under subsection (b) files a sworn affidavit required under section 16(3), 17(3), or 18(3) of this chapter, the court may order the appropriate agencies to reinstate the employer's suspended licenses.

1 **Sec. 21. A court may consider the following factors, if**
 2 **applicable, in deciding whether to order an agency to revoke an**
 3 **employer's license or licenses for a period determined by the court**
 4 **or permanently revoke an employer's license under section 19 of**
 5 **this chapter:**

6 (1) **The number of unauthorized aliens employed by the**
 7 **employer.**

8 (2) **Any prior misconduct by the employer.**

9 (3) **The degree of harm resulting from the violation.**

10 (4) **The extent to which the employer made good faith efforts**
 11 **to comply with any applicable requirements under this**
 12 **chapter.**

13 (5) **The duration of the violation.**

14 (6) **The role of the directors, officers, or agents of the**
 15 **employer in the violation.**

16 (7) **Any other factors the court considers relevant.**

17 **Sec. 22. (a) If an agency receives an order from a court under**
 18 **section 20(b) of this chapter, the agency shall immediately suspend**
 19 **the license or licenses described in section 20(a) of this chapter that**
 20 **are held by the employer to which the order relates.**

21 **(b) If an agency receives an order from a court under section 19**
 22 **of this chapter, the agency shall immediately revoke the license or**
 23 **licenses described in section 20(a) of this chapter that are held by**
 24 **the employer to which the order relates.**

25 **Sec. 23. A court shall send copies of all orders issued under**
 26 **sections 16, 17, 18, 19, and 20 of this chapter to the attorney**
 27 **general.**

28 **Sec. 24. (a) In determining whether an individual is an**
 29 **unauthorized alien for purposes of this chapter, a court may**
 30 **consider only the federal government's verification or status**
 31 **information provided under 8 U.S.C. 1373(c).**

32 **(b) The federal government's verification or status information**
 33 **provided under 8 U.S.C. 1373(c) creates a rebuttable presumption**
 34 **of an individual's lawful status.**

35 **(c) The court may:**

36 (1) **take judicial notice of the federal government's**
 37 **verification or status information; and**

38 (2) **request the federal government to provide automated or**

1 testimonial verification under 8 U.S.C. 1373(c).

2 **Sec. 25.** A prosecuting attorney may not file an action against an
3 employer under section 14 of this chapter for knowingly employing
4 an unauthorized alien if the employer verified the employment
5 authorization of the employed individual through the E-Verify
6 program.

7 **Sec. 26.** An employer may establish as an affirmative defense
8 against an alleged violation under section 10 of this chapter that
9 the employer complied in good faith with the requirements of 8
10 U.S.C. 1324a(b).

11 **Sec. 27.** The attorney general shall:

12 (1) maintain copies of orders received under section 23 of this
13 chapter;

14 (2) make the orders available on the attorney general's
15 Internet web site; and

16 (3) establish and maintain a data base of the names and
17 addresses of the employers that have a violation under this
18 chapter.

19 **Sec. 28.** This chapter does not require an employer to take any
20 action that the employer believes in good faith would violate
21 federal law.

22 **Sec. 29.** A person who files a complaint with the attorney
23 general or the department under this chapter, knowing that the
24 complaint is false or frivolous, commits a Class B misdemeanor.

25 **Sec. 30. (a)** An employer may not discharge an employee or in
26 any way discriminate against any employee because the employee:

27 (1) has filed a complaint or instituted or caused to be
28 instituted any proceeding under or related to this chapter;

29 (2) has testified or is about to testify in any proceeding under
30 this chapter; or

31 (3) exercised on behalf of the employee or others any right
32 afforded by this chapter.

33 **(b)** Any employee who believes that the employee has been
34 discharged or otherwise discriminated against by any person in
35 violation of this section may, within thirty (30) calendar days after
36 the violation occurs, file a complaint with the commissioner of
37 labor alleging the discrimination.

38 **(c)** Upon receipt of a complaint under subsection (b), the

1 commissioner of labor shall investigate as the commissioner of
2 labor considers appropriate.

3 (d) If after an investigation, the commissioner of labor
4 determines that the provisions of this section have been violated,
5 the commissioner of labor, through the attorney general, shall, not
6 later than one hundred twenty (120) days after receipt of the
7 complaint under subsection (b), bring an action in the circuit
8 courts of Indiana.

9 (e) The circuit courts of Indiana have jurisdiction to restrain
10 violations of this section and order all appropriate relief, including
11 rehiring, or reinstatement of the employee to the employee's
12 former position with back pay, after taking into account any
13 interim earnings of the employee.

14 (f) Not later than ninety (90) days after the receipt of a
15 complaint filed under this section, the commissioner of labor shall
16 notify the complainant in writing of a determination under this
17 section.

18 Sec. 31. The suspension or revocation of a license under this
19 chapter does not relieve an employer from an obligation to
20 withhold, collect, or pay income tax on wages paid by the employer
21 to an employee.

22 Sec. 32. This chapter shall be enforced without regard to race or
23 national origin."

24 Delete pages 6 through 11.

25 Page 12, delete lines 1 through 34.

26 Page 16, line 11, delete "IC 22-5-1.5-26" and insert "**IC**
27 **22-5-1.5-25**".

28 Page 19, line 2, after "who" insert ", in a five (5) year period,".

29 Page 20, between lines 32 and 33, begin a new paragraph and insert:

30 "SECTION 17. IC 36-2-13-7.5 IS ADDED TO THE INDIANA
31 CODE AS A NEW SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The sheriff shall make a
33 reasonable effort to determine the citizenship or immigration
34 status with the United States Department of Homeland Security of
35 a person who is:

36 (1) charged with a felony or with operating a vehicle while
37 intoxicated; and

38 (2) confined, for any period, in a county jail.

1 **(b) If the sheriff is unable to verify the citizenship or**
 2 **immigration status of a person described under subsection (a), the**
 3 **sheriff shall notify the United States Department of Homeland**
 4 **Security that the citizenship or immigration status of the person**
 5 **described in subsection (a) could not be verified. The sheriff shall**
 6 **assist the United States Department of Homeland Security with**
 7 **information leading to the deportation of a person described in**
 8 **subsection (a) who is unlawfully present in the United States.**

9 **(c) Upon request from the department of correction, the sheriff**
 10 **shall make available a copy of any information or documents the**
 11 **sheriff collects in attempting to determine the citizenship or**
 12 **immigration status of a person under this section to the**
 13 **department of correction."**

14 Page 20, delete lines 33 through 42.

15 Page 21, delete lines 1 through 19.

16 Page 21, line 20, delete "The department of" and insert "**A**
 17 **prosecuting attorney may not file an action"**.

18 Page 21, line 21, delete "labor may initiate an administrative
 19 proceeding".

20 Page 21, line 22, delete "IC 22-5-1.5-15," and insert "**IC**
 21 **22-5-1.5-14,"**.

22 Page 21, line 23, delete "IC 22-5-1.5-11," and insert "**IC**
 23 **22-5-1.5-10,"**.

24 Renumber all SECTIONS consecutively.
 (Reference is to SB 580 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 7, Nays 0.

Kruse

Chairperson